



July 12, 2013

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street N.W.
Washington, D.C. 20544

RE: Opposition to UTC-Winchester Application for Review; *Petition to Establish Rules Governing Critical Infrastructure Industry Fixed Service Operations in the 14.0-14.5 GHz Band*
RM-11429

Dear Ms. Dortch,

ESOA¹ hereby files this letter in support of the Oppositions filed by SIA² and EchoStar³ urging the Commission to deny the Utilities Telecom Council and Winchester Cator, LLCs' ("UTC-Winchester" or "Petitioners") Application for Review⁴ of the Commission's recent Order denying their Petition for Rulemaking.⁵ ESOA agrees with SIA's and EchoStar's conclusions

¹ ESOA is a non-profit European organization established with the objective of serving and promoting the common interests of European satellite operators. The Association represents the interests of 24 satellite operators, space manufacturers, and other satellite actors who enable the delivery of communication services across the globe (*see* www.esoa.net).

² *Utilities Telecom Council and Winchester Cator, LLC Petition for Rulemaking to Establish Rules Governing Critical Infrastructure Industry Fixed Service Operations in the 14.0-14.5 GHz Band*, RM-11429, Satellite Industry Association Opposition to Application for Review ("*SIA Opposition*"), July 1, 2013.

³ *Utilities Telecom Council and Winchester Cator, LLC Petition for Rulemaking to Establish Rules Governing Critical Infrastructure Industry Fixed Service Operations in the 14.0-14.5 GHz Band*, RM-11429, EchoStar Satellite Operating Corporation and Hughes Network Systems, LLC Opposition to Application for Review ("*EchoStar Opposition*"), July 1, 2013.

⁴ *Utilities Telecom Council and Winchester Cator, LLC Petition for Rulemaking to Establish Rules Governing Critical Infrastructure Industry Fixed Service Operations in the 14.0-14.5 GHz Band*, RM-11429, Application for Review, June 14, 2013 ("*Application for Review*").

⁵ *Utilities Telecom Council and Winchester Cator, LLC Petition for Rulemaking to Establish Rules Governing Critical Infrastructure Industry Fixed Service Operations in the 14.0-14.5 GHz Band*, RM-11429, Order, DA 13-1093 (rel. May 15, 2013) ("*Order*").

that the Commission: (1) acted well within its broad discretion in rejecting the UTC-Winchester Petition, and (2) was correct in finding that Petitioners had failed to propose a plan to mitigate unacceptable interference to current and future primary licensees in the Ku-band, where UTC-Winchester proposes to operate.⁶

The Ku-band is a critical frequency band for the operation of satellite services, which operate on a primary basis globally and in the U.S.⁷ ESOA members manage and operate several satellites in the Ku-band providing a variety of advanced voice, data and video communications services directly to U.S. customers. ESOA agrees with SIA and EchoStar that the FCC correctly recognized in the *Order* that UTC-Winchester's proposal to utilize portions of the Ku-band on a secondary basis would cause harmful interference to primary satellite users in this band.⁸ Further, like SIA and EchoStar, ESOA agrees with the Commission's finding that Petitioner's proposal to mitigate interference was an inadequate attempt to address the many serious interference issues raised by incumbent operators.⁹

The record in this proceeding and the Commission's own technical findings support the conclusion that "[the] UTC-Winchester Petition makes assumptions about allocations, licensing and system operation that are not fully explained and that appear to rely on incorrect premises that are inappropriate for the types of service that UTC-Winchester proposes."¹⁰ As noted by SIA, the Commission has exceedingly broad discretion in deciding whether to initiate a rulemaking.¹¹ Given the Commission's nearly plenary rulemaking authority, it is the Petitioner's onus to present a compelling case against the *Order* that justifies its *Application for Review*. In concurrence with SIA and EchoStar, ESOA believes that the Petitioner cannot reasonably challenge the *Order's* comprehensive technical and policy considerations. Because a reversal of the *Order* is therefore unlikely, granting the Petitioner's *Application for Review* would simply be a waste of the Commission's valuable time and resources.

ESOA members and many other parties in this proceeding maintain a vested interest in expanding their respective businesses in the Ku-band. The Fixed-Satellite Service ("FSS") industry plays a vital role in the growth of the telecommunications sector of the U.S. economy. As incumbents in the Ku-band, FSS providers "should be free to continue adding new services and products to the market, and should not be burdened by any 'new obligation or constraints' imposed by secondary users."¹² It would be unfair to FSS providers, as well as imprudent from an industry growth standpoint, to allow UTC-Winchester to operate in the vitally important Ku-

⁶ See *SIA Opposition* at p. 1; See also *EchoStar Opposition* at p. 1.

⁷ See 47 C.F.R. § 2.106.

⁸ *Order* at ¶ 6.

⁹ *Id.* at ¶ 4.

¹⁰ *Id.*

¹¹ See *supra* note 4 at p. 3 (citing *Cellnet Communications, Inc. v. FCC*, 965 F.2d 1106,1111-12 (D.C. Cir, 1992)).

¹² See *supra* note 5 at p. 6 (quoting *Order* at ¶ 10).

frequency band.

For the above reasons, ESOA fully supports the Oppositions submitted by SIA and EchoStar urging the Commission to deny UTC-Winchester's *Application for Review*. The Commission sensibly rejected Petitioner's inadequate and last-minute plan to comply with required interference criteria in the Ku-band. The Commission likewise correctly reflected in the *Order* that the threat of harmful interference to incumbent FSS systems was far too great to grant UTC-Winchester's Petition to operate in the band on a secondary basis. In light of these findings, there is no reason for the Commission to second-guess the *Order*. Accordingly, Petitioner's *Application for Review* should be denied.

Respectfully submitted,

/S/

European Satellite Operator's Association

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Certificate of Service

I, Aarti Holla-Maini, Secretary General at ESOA hereby state that true copies of the foregoing “Letter in Support of Opposition to UTC-Winchester Application for Review” were sent this 22nd day of 2013 by first class mail, postage prepaid to the attached service list.

/s/

Aarti Holla-Maini

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